IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FAMILY COURT APPEAL NO.99 OF 2004

Navin Chander Advani
Flat No.8-10 Building
Shantiniketan, Opposite
Kalina University
Bombay 400 029. .. Appellant.

Versus

Leena @ Diviya Navin Advani
C/o Mr.Gul Tolani
2500, Knights Road Apts.,
2702, Bensalem Pan 19020 USA,
presently residing at
C/o.Mr.Gul Tolani
A-602, Andheri Manish Garden
Society, Four Bungalows,
Andheri (W),
Mumbai 400 053. .. Respondent.

Mr.P.M.Karlekar the appellant.
None for the respondent.

CORAM : S.B.MHASE &
D.B.BHOSALE, JJ.

DATE : APRIL 6, 2005.

ORAL JUDGMENT: (PER S.B.MHASE, J.)

1. Heard.

2. This appeal is directed against the order passed by the Family Court, Pune on 15th October, 2003 in Marriage Petition No.A-1603 of 2000 whereby the family court returned the petition filed by the present appellant for its presentation before proper forum. The family court has noted that the

appellant and the respondent have married in U.S.A. The parties have last resided in U.S.A. and the respondent lived in U.S.A. and, therefore, the court has no jurisdiction to entertain the petition. This observation and the reasoning given by the family court are not proper and legal in view of the facts and circumstances of the case. This marriage petition has been filed by the appellant invoking the provisions of the Special Marriage Act, 1954. He has pleaded that the marriage between the appellant and the respondent was solemnised on 19th July, 1998 according to Hindu Vedic rites and it was registered on 12th August, 1998 before the Registrar of San-Jose California State. The appellant has stated that he is domiciled in the State of Maharashtra and professing Hindu religion even at the time of filing of the petition. It is further averred that the respondent is a permanent resident of Bombay and an Indian thereby professing Hindu religion and continues to profess the same even at the time of filing the petition. Thus, from reading these averments it appears that the husband and wife both are Indian citizens, domiciled in India. However, they have performed their marriage according to Hindu rites on 19th July, 1998 in U.S.A. Let the

fact as it is what we find that since the parties are Indian citizens and domiciled in India, the courts in India will have jurisdiction. The family court has jurisdiction to deal with the matters under the Special Marriage Act and equally under the Hindu Marriage Act. It has even jurisdiction to deal with matrimonial matters where the parties are Muslims. Except, the Parsi Marriage Act for all other marriages the family court is having jurisdiction. While deciding the matter the family court is only expected to look into personal law of the parties. Looking from this angle with reference to section 31 sub-section (1) clause 4 of Special Marriage Act and section 19 sub-section (1) clause 4 of the Hindu Marriage Act are at verbatim. Under section 31(1) it provides that Every petition under Chapter V or Chapter VI shall be presented to the district court within the local limits of whose original civil jurisdiction -- (iv) the petitioner is residing at the time of the presentation of the petition, in a case where the respondent is at that time residing outside the territories to which this Act extends ...." and under section 19 it provides "Every petition under this Act shall be presented to the district court within the local limits of whose ordinary original civil

jurisdiction-- (iv) the petitioner is residing at the time of the presentation of the petition, in a case where the respondent is, at that time, residing outside the territories to which this Act extends ...." thereby the situation has been contemplated that the appellant is residing within the ordinary civil jurisdiction of the court and other side namely the respondent is residing outside the territories to which this Act extends. This aspect has not been considered by the family court, therefore, keeping this in view what we find is that it was obligatory for the family court to find out as to whether the marriage petition is to be considered under the Hindu Marriage Act or Special Marriage Act. It was equally necessary for the family court to look into the provisions pertaining to the jurisdiction which we have quoted from both the enactments. The family court has not looked into these provisions and in casual manner stated that the marriage is performed outside India. The parties are residing in USA and has returned marriage petition. In fact on proper application of law even it was obligatory for the family court to consider conversion of the petition, if the request for amendment, is made to that effect by the applicant. In short, what we

find is that the marriage petition has been returned in very casual manner without looking into the provisions of law. The family court should have made reference to some extent, if necessary, to the provisions of the Private International Law also. We observe and record the finding that the matter was not disposed of by the family court in accordance with law on the point of jurisdiction and, therefore, we quash and set aside the impugned order and remit back the matter to the family court to consider in the light of the observations which we have made and after considering the provisions of law on merit and for that purpose the family court shall give an opportunity to the parties to address on the point of law. If the applicant finds it necessary to convert the petition under the Hindu Marriage Act and/or for that purpose seeks amendment, such prayer, if made, shall be considered by the family court on its own merit taking into consideration the statutory provisions and law on the point. With these observations the matter is remitted back. The family court is directed to decide the issue of jurisdiction as early as possible and in any circumstances within a period of two months from the date of receipt of the order and record. The appeal is disposed of.

(D.B.BHOSALE, J.) **(S.B.MHASE, J.)**

:hcs/mar

HIGH COURT AT BOMBAY
CIVIL APPELLATE SIDE

FAMILY COURT APPEAL NO.99 OF 2004

Date of Decision: April 6, 2005.

For approval and signature:

The Hon'ble Mr.Justice : S.B. MHASE

And

The Hon'ble Mr.Justice : D.B. BHOSALE

1. Whether Reporters of Local papers may be allowed to see the judgement ?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any Order made thereunder?

5. Whether it is to be circulated to the Civil Judges?

6. Whether the case involves an important question of law and whether a copy of the judgment should be sent to Nagpur Office?